

Memorandum of Decision: 04-20181297
Gross Retail Tax
For the Year 2016

NOTICE: IC § 4-22-7-7 permits the publication of this document in the Indiana Register. The publication of this document provides the general public with information about the Indiana Department of Revenue's official position concerning a specific set of facts and issues. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Memorandum of Decision.

HOLDING

Ohio Automobile Dealer was entitled to a refund of sales tax it collected and remitted on behalf of an Indiana customer because the Automobile Dealer paid the tax twice; it was not entitled to a refund of fees and penalties associated with issuing Indiana a dishonored check.

ISSUE

I. Gross Retail Tax - Duplicate Sales Tax Payment.

Authority: IC § 6-2.5-3-5; Ohio Rev. Code Ann. § 5739.029(A); Ohio Department of Taxation, https://www.tax.ohio.gov/sales_and_use/information_releases/st2007_04archive.aspx.

Taxpayer argues it is entitled to a refund of sales tax it paid on behalf of one of Taxpayer's Indiana automobile customers.

STATEMENT OF FACTS

Taxpayer is an automobile dealership located in Ohio. Taxpayer sold a car to an Indiana customer. For illustrative purposes and simplicity's sake, this decision will assume the automobile cost the customer \$10,000.

Taxpayer collected seven percent (\$700) sales tax from customer.

Taxpayer sent a portion of the sales tax - six percent or \$600 - to the Ohio clerk of courts. Taxpayer assumed that the six percent would be sent to Indiana.

Taxpayer intended to send the remaining one percent (\$100) directly to Indiana in order to satisfy the total sales/use tax its customer would have owed Indiana.

Taxpayer made a mistake; instead of sending the one percent \$100 amount, Taxpayer sent Indiana a check for the entire seven percent (\$700).

Realizing its mistake, Taxpayer stopped payment on the \$700 check.

The Indiana Bureau of Motor Vehicles ("BMV") contacted Indiana customer notifying him of the dishonored check. In order to avoid "suspension of [customer's] registration and driver's license" customer was required to pay tax and fees of \$1,000.

Taxpayer's customer service Department intervened on behalf of the now unhappy customer and paid the \$1,000 which included the tax amount and the fees assessed by the BMV.

On the ground that it had twice paid the original sales tax due on customer's vehicle, Taxpayer sought a refund of the difference between the amount of tax originally owed Indiana (\$700) and the amount of the check it eventually wrote to the BMV.

The Indiana Department of Revenue denied the refund on the ground that "the individual that created the taxable event is not the person applying for the refund."

Taxpayer disagreed with the decision denying the refund and submitted a protest to that effect. An administrative hearing was conducted during which Taxpayer's representative explained the basis for the protest.

This Memorandum of Decision results.

I. Gross Retail Tax - Duplicate Sales Tax Payment.

DISCUSSION

The issue is whether Taxpayer has established that it collected and paid the seven percent tax due on the purchase of the customer's vehicle. If so, is Taxpayer entitled to a refund of any portion of the total amounts Taxpayer paid Indiana?

At the outset, it needs to be pointed out that Ohio did not - and does not - forward any portion of the six percent sales tax it collected on the sale of vehicles to out-of-state - in particular Indiana - customers.

Ohio Rev. Code Ann. § 5739.029(A) provides:

Notwithstanding sections 5739.02, 5739.021, 5739.023, 5739.026, 5741.02, 5741.021, 5741.022, and 5741.023 of the Revised Code, and except as otherwise provided in division (B) of this section, the tax due under this chapter on the sale of a motor vehicle required to be titled under Chapter 4505 of the Revised Code by a motor vehicle dealer to a consumer that is a nonresident of this state shall be the lesser of the amount of tax that would be due under this chapter and Chapter 5741 of the Revised Code if the total combined rate were six percent, or the amount of tax that would be due to the state in which the consumer titles or registers the motor vehicle or to which the consumer removes the vehicle for use.

This section of the Ohio law allows, in certain cases, the imposition of *Ohio* sales tax on the purchase of motor vehicles by nonresidents. Ohio motor vehicle dealers are only required to collect Ohio sales on the sales of motor vehicles to nonresidents who will remove the vehicle to one of seven states; those states include Arizona, California, Florida, Indiana, Massachusetts, Michigan, and South Carolina. Ohio Department of Taxation, https://www.tax.ohio.gov/sales_and_use/information_releases/st2007_04archive.aspx. (last visited May 18, 2018).

The amount of sales tax Ohio dealers collects on sales of motor vehicles to residents who intend to remove, title, and register the vehicle in Indiana and - and other six states mentioned above - is the lesser of the:

- sales tax due to Ohio; or
- the amount of sales tax the nonresident would pay in the state of titling, registration, or use.

In other words, Taxpayer correctly charged its customer seven percent sales tax. However, six percent of that amount is Ohio sales tax; Ohio retains the six percent and does not - as Taxpayer erroneously believes - send the six percent to Indiana.

However of course, Indiana allows a "credit" for tax paid in another state such as Ohio. IC § 6-2.5-3-5 provides:

A person is entitled to a credit against the use tax imposed on the use, storage, or consumption of a particular item of tangible personal property equal to the amount, if any, of sales tax, purchase tax, or use tax paid to another state, territory, or possession of the United States for the acquisition of that property.

Taxpayer's Indiana customer was entitled to a six percent credit for the Ohio sales tax Taxpayer collected and forwarded to the Ohio clerk of courts. Taxpayer is entitled to a credit for the one-percent sales tax Taxpayer paid the BMV. Taxpayer's customer has satisfied his obligation for the sales and use tax due Indiana on the purchase of the car.

Taxpayer is correct in that it has overpaid the amount of money owed Ohio and Indiana. However, the Department does not agree that it is entitled to any portion of the fees and charges attributable to the dishonored check. What Taxpayer is entitled to is a refund of the duplicate sales tax amount it remitted on behalf of the Indiana customer. In this case, the amount is *exactly* the amount Taxpayer originally sought in its refund claim.

FINDING

Taxpayer's protest is sustained.

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